SUPREME COURT, U. S.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1968

No. [redacted] 89

WILLIAM L. STEADHAM, PERCY V. JOHNSON, G. GAMBLE, JOHN HENRY HITE, LINCOLN JASPER BYRD, SARA W. BYERS, H. W. THOMPSON, J. E. HAWKINS, H. C. CLARK, PERCY V. JOHNSON and R. L. BAILEY,
Petitioners,

v.

THE STATE OF GEORGIA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the Supreme Court of the State of Georgia.

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THE STATE OF GEORGIA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the Supreme Court of the State of Georgia.

Petitioners pray that a writ of certiorari issue to review the judgment of the Supreme Court of The State of Georgia entered on the 18th day of January, 1968, and in which a timely motion for rehearing was filed by Petitioners and in which a rehearing was denied by the Supreme Court of Georgia on February 12, 1968.

CITATIONS OF OPINIONS BELOW.

The opinion of the Supreme Court of Georgia is identified as Case No. 24455 and is reported in 224 Georgia 78 (... S. E. ...). The Opinion of the Supreme Court of Georgia is printed as Appendix A hereto, infra, p. 9.

JURISDICTION.

The judgment of the Supreme Court of Georgia in the original decision was decided on January 18, 1968, and rehearing was denied on February 12, 1968. The jurisdiction of this Court is invoked under 28 U. S. C. 1257 (3).

QUESTIONS PRESENTED.

The questions presented are:

1) Whether the Carroll County Board of Education is illegally constituted because the grand jury lists from which the grand jury was drawn that elected the members of the Board of Education of Carroll County were chosen only from the tax digests of Carroll County, Georgia, and not from the voters lists of Carroll County, Georgia?;

2) Can the legality of election of members of the Board of Education be attached in a bond validation proceeding?;

3) Whether the constitutional guarantee that the right of trial by jury remain inviolate requires a jury trial in a bond validation proceeding?;

4) Whether petitioners, residents of Carroll County, Georgia, are denied due process of law and equal protection of law where the bond validation proceeding is required to be held in Fulton County, Georgia.

STATUTES INVOLVED.

The statutory provisions involved are:

1) Ga. Const., Art. VI, Section XVI, Paragraph 1 (Ga. Code Ann. 2-5101).

2) Ga. Const., Art VI, Section XIV, Paragraph VI (Ga. Code 2-4906).

3) Ga. Code Ann., § 32-1423a—Appendix B.

4) Ga. Code 32-1402a—Appendix C.

5) Ga. Code Ann., § 87-818—Appendix D.

6) Ga. Code, § 59-106—Appendix E.

7) Due Process and Equal Protection Clause of the Constitution of the United States.

STATEMENT.

The State of Georgia, acting through Lewis R. Slaton, Solicitor General, instituted in the Superior Court of Fulton County, Georgia, a bond validation proceeding under the provisions of Ga. Laws 1951, pp. 251, 258, as amended by Ga. Laws 1967, pp. 871-874 (Ga. Code Ann., § 32-1423a). The defendants therein were the Georgia Education Authority (Schools) and the members thereof, the State Board of Education and the members thereof, and the five members of the Carroll County Board of Education.

Petitioners herein, two of whom are members of the Carroll County Board of Education, filed an intervention in which numerous constitutional attacks were made on the right and authority to validate the bonds and raised the questions, among others, presented for review by this Court.

The need for the validation procedure arose from actions by the Carroll County Board of Education in

adopting the necessary resolutions to obtain financing of construction of school facilities by the Georgia Education Authority (Schools). This was accomplished by agreements between the Carroll County Board of Education and the State Board of Education, and in turn, agreements between the entities as provided by statute.

From the decision validating the bonds in Fulton Superior Court, Petitioners appealed to the Supreme Court of Georgia enumerating as error:

1) The overruling of the demand for jury trial;

2) In ruling that the Superior Court of Fulton County had jurisdiction;

3) In denying the prayers of intervenors;

4) In upholding the lease agreement between the Carroll County Board of Education and the Georgia Education Authority (Schools);

5) In refusing to declare the Carroll County Board of Education to be illegally constituted as having been elected by members of the Grand Jury taken solely from the tax digest, rather than the voters list;

6) In upholding the advertisement of the bond validation proceedings.

The Federal Constitutional issues was clearly presented in the trial Court and presented to the Supreme Court of Georgia and were presented and preserved in every stage of the litigation.

Rehearing was denied by the Supreme Court of Georgia on February 12, 1968, and Petitioners now seek the writ of certiorari to review the decisions of the Supreme Court of Georgia.

REASONS FOR GRANTING THE WRIT.

The decision of the Supreme Court of Georgia upheld and validated school bonds that, in effect, created a debt upon the citizens and taxpayers of Carroll County, Georgia directly resulting from a bare majority (three of five) of the members of the board.

On its face it appears that the acts of the bare majority of the members of the school board is in compliance with the laws of Georgia. However, a closer examination shows that the school board itself is not duly constituted.

By an Act approved March 30, 1967 (Ga. Laws 1967, p. 251) that became effective immediately upon approval by the Governor, the method of choosing grand jurors was changed. This change was to obtain the names of grand jurors from the voters list rather than the tax digest.

The composition of grand jury lists has been before this Court on many occasions. **Williams v. Georgia,** 349 U. S. 375, 99 L. Ed. 1161, 1170, 75 S. Ct. 814 (1955). **Avery v. Georgia,** 345 U. S. 559, 97 L. Ed. 1244, 73 S. Ct. 891 (1953). **Whitus and Davis v. Georgia,** 385 U. S. 545, 17 L. Ed. 2d 599, 87 S. Ct. 643.

The use of tax digests containing racial designations as the source for names of grand jurors provided the opportunity for discrimination rendering acts of the members of the school board void for lack of a duly constituted Board. A grand jury that could not legally indict cannot have authority to elect a school board member.

Here, taxpayers of Carroll County, Georgia, were required to leave their County of residence and contest the validity of the creation of a debt upon themselves outside their county and were denied the right to trial by jury upon the issues raised in their intervention. Notwithstand-

ing the constitutional guarantees as to trial by jury and the right to a trial in the county of his residence, these taxpayers were required to leave their county to defend and protect their property by resisting a bond validation proceeding in Fulton County, Georgia.

The Supreme Court of Georgia held that the legality of the election of the members of the Board of Education of Carroll County could not be raised in the bond validation proceeding in that such an attack was a collateral attack. Suffice it to say that a citizen and taxpayer should be authorized to raise any issue that directly or indirectly affects the rights of the citizen.

The questions presented by this petition are not only important to these Petitioners but are important to every person asserting a right as a citizen. The questions presented are important in ascertaining and determining whether or not the grand jury that elects members of a County Board of Education is required to comply with the "one man-one vote" requirement and whether or not the members of the appointing grand jury are constituted legally where the state has recognized basic and fundamental discrepancies and allowed the members of the appointing body to be selected from tax digest that afford a basis for racial discrimination. This becomes even more apparent when the state has recognized and changed the source by requiring that they come from the list of registered voters.

The remaining questions are basic and affect the rights of Petitioners and every other citizen and the questions presented should be put at rest and decided on the merits of this record so as to afford guidance in the future.

CONCLUSION.

For the foregoing reasons, this petition for a writ of certiorari should be granted.

This 9th day of May, 1968.

Respectfully submitted,

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Lawrenceville, Georgia 30245,
Attorney for Petitioners.

APPENDIX A.

Opinion—Supreme Court of Georgia.

Decided Jan. 18, 1968.

24455.

Steadham, Member of Carroll County Board of Education, et al. v. State of Georgia.

1. The motion to dismiss is without merit.

2. A bond validation proceeding is not one of the class of cases in which jury trials have ever existed as a matter of right, and the constitutional guarantee that the right of trial by jury shall remain inviolate does not require a jury trial in such proceeding.

3. The requirement that bonds of the Georgia Education Authority (Schools) be validated in Fulton Superior Court, and that notice be published in a newspaper of that county, does not deny due process of law and equal protection of the laws to taxpayers of Carroll County, where the project financed by the bonds will be located.

4. The official actions of the members of the Board of Education of Carroll County are prima facie valid, and the legality of the election to office of such members can not be attacked collaterally in a proceeding for validation of bonds.

5. Questions as to the feasibility of the project for which the bonds are to be issued can not be considered, since no transcript of the evidence in the validation proceeding has been included in the record before this court.

6. Assignments of error which are not argued in this court will be considered as abandoned.

Mobley, Justice. This appeal is by intervenors in a bond validation proceeding instituted in the Superior Court of Fulton County by the State of Georgia acting through Lewis R. Slaton, Solicitor General, under the provisions of Ga. L. 1951, pp. 241, 258, as amended by Ga. L. 1967, pp. 871-874 (Code Ann., § 32-1423a). The defendants were the Georgia Education Authority (Schools) and the members thereof, the State Board of Education and the members thereof, and the five members of the Carroll County Board of Education. The answer of the Carroll County Board of Education was signed by three of the members, constituting a majority of the board. An intervention was filed by William L. Steadham and Percy V. Johnson, members of the Carroll County Board of Education, and other persons, alleging themselves to be citizens and taxpayers of Carroll County, in which numerous Constitutional and other attacks were made on the right to validate the bonds. The enumeration of errors assigns error generally on every determination made in the order validating the bonds, and specifically assigns error on certain rulings.

1. Motion has been made by the appellees to dismiss the appeal because no transcript of the evidence has been filed by the appellants. It is argued by the appellees that the notice of appeal specifies that the clerk of the superior court omit "nothing" from the record on appeal, that this specification would include the transcript, and since no transcript has been made a part of the record, the transcript was not filed within thirty days, as required by law, and no extension of time was granted.

Under Ga. L. 1965, pp. 18, 20, as amended by Ga. L. 1966, pp. 493, 495 (Code Ann. § 6-802), a notice of appeal should contain "a designation of those portions of the record to be omitted from the record on appeal," and should state "whether or not any transcript of evidence and proceedings is to be transmitted as a part of the rec-

ord on appeal." The notice in the present appeal did not state whether a transcript of the evidence would be filed. The specification that "nothing" is to be omitted from the record would not infer that the transcript is to be included, since the appellant is required to state whether the transcript will be filed, in addition to designating any portion of the record to be omitted.

The appellants had a choice as to whether or not they would file a transcript of the evidence, and the failure to file such a transcript will not result in a dismissal of the appeal, but no questions can be decided which require a consideration of the evidence.

2. The intervenors made a written demand for a trial by a jury on all issues of fact in the case, which demand was refused by the trial judge. It is asserted that the refusal of the judge to submit the issues to a jury violated the Constitution, Art. VI, Sec. XVI, Par. I (Code § 2-5101), which provides that the "right of trial by jury, . . . shall remain inviolate, . . ."

Code Ann. § 32-1423a provides that bonds of the Georgia Education Authority (Schools) shall be validated in accordance with the procedure of the Revenue Certificate Law of 1937. In prescribing the procedure as to the validation of revenue bonds, in Ga. L. 1937, pp. 761, 771 (Code Ann. § 87-818), it is stated that "the judge of the said superior court shall proceed to hear and determine all the questions of law and of fact in said cause, . . ." In Lippitt v. City of Albany, 131 Ga. 629 (2), 631 (63 SE 33), this court held that a bond validation proceeding is not one of the class of cases, "either in terms or by analogy, in which jury trials have ever existed as matter of right; and it does not fall within the constitutional provision above quoted [now Code Ann. § 2-5101]."

3. It is contended that the validation of the bonds in Fulton Superior Court, in accordance with Ga. L. 1951,

pp. 241, 258 (Code Ann. § 32-1422a), and the publication of notice in the newspaper in which legal advertisements are published in Fulton County, deprived the intervening citizens and taxpayers of Carroll County of due process of law and equal protection of the laws under the State and Federal Constitutions, because the venue of the validation proceeding is fixed by the Constitution of Georgia in Carroll Superior Court.

Under the Constitution of Georgia, Art. VI, Sec. XIV, Par. VI (Code Ann., § 2-4906), the venue of a bond validation proceeding is in the county in which the governmental unit issuing the bonds is located. Ray v. City of Lavonia, 141 Ga. 626 (81 S. E. 884). The bonds sought to be validated in the present case are bonds of the Georgia Education Authority (Schools), which is "an instrumentality of the State of Georgia and a public corporation," with authority in that name to "sue and be sued; implead and be impleaded; and complain and defend in all courts of law and equity." Ga. L. 1967, pp. 871, 872 (Code Ann., § 32-1402a). Its legal situs is at the seat of government in Atlanta, Fulton County, and the placing of exclusive jurisdiction of actions for validation of bonds of the Authority in Fulton Superior Court (Code Ann., § 32-1422a), and giving notice of the validation proceeding in the publication in which legal advertisements are published in Fulton County, was not a denial of the intervenors' right of due process or equal protection of the laws.

4. It is asserted that the Carroll County Board of Education is illegally constituted because the grand jury lists from which the grand jury was drawn that elected the board members were chosen only from the tax digests of Carroll County and not from the voters' lists of Carroll County. The official actions of the members of the Board of Education of Carroll County are prima facie valid, and

the legality of the election to office of such members can not be attacked collaterally in a proceeding for validation of bonds. Brown v. Flake, 102 Ga. 528 (29 S. E. 267); DeLoach v. Newton, 134 Ga. 739 (3) (68 S. E. 708); Tucker v. Roberts, 151 Ga. 753 (1) (108 S. E. 222); Morris v. Smith, 153 Ga. 438 (3) (112 S. E. 468); Stephens v. School District, 154 Ga. 275 (8) (114 S. E. 197); Clements v. Powell, 155 Ga. 278 (6) (116 S. E. 624); Jennings v. New Bronwood School District, 156 Ga. 15 (118 S. E. 560).

5. Questions as to the feasibility of the project for which the bonds are to be issued can not be considered, since no transcript of the evidence in the validation proceeding has been included in the record before this court.

6. Many of the constitutional questions made by the intervention had been decided, adversely to the contentions of the intervenors, in Sheffield v. State School Building Authority, 208 Ga. 575 (68 S. E. 2d 590), where this court considered a number of constitutional attacks on the act of 1951, pp. 241-246, creating the State School Building Authority, the predecessor Authority of the Georgia Education Authority (Schools). In the foregoing division of this opinion we have dealt only with the assignments of error which were argued by the intervenors in their brief.

Judgment affirmed. All the Justices concur.

APPENDIX B.

Ga. Code Ann., § 32-1423 a. Same; validations.—Bonds of the Authority shall be confirmed and validated in accordance with the procedure of the Revenue Certificate Law of 1937, as amended. The petition for validation shall make party defendant the said Authority, and shall also make party defendant to such action the State Board of Education and any political subdivision which has contracted with said Authority for the use of any building, structure or facility for which bonds have been issued and sought to be validated, and such parties shall be required to show cause, if any, why such contract or contracts and the terms and conditions thereof should not be inquired into by the court and the validity of the terms thereof determined and the matters and conditions imposed on the State Board of Education to be performed, and all such undertakings adjudicated as security for the payment of any such bonds of the Authority. In the event no bill of exception shall be filed within 20 days from the date of the judgment of validation, or if filed and the judgment shall be affirmed by the proper appellate court of this State, the judgment of the superior court so confirming and validating the issuance of the bonds shall be forever conclusive upon the validity of the bonds against the Authority issuing the same and against all parties to such proceedings (Acts 1951, pp. 241, 258).

APPENDIX C.

Ga. Code Ann., § 32-1402 a. Creation; members; officers; quorum; rules and regulations.—There is hereby created a body corporate and politic to be known as the Georgia Education Authority (Schools), which shall be deemed to be an instrumentality of the State of Georgia and a public corporation and by that name, style, and title said body may contract and be contracted with; sue and be sued; implead and be impleaded; and complain and defend in all courts of law and equity. The Authority shall consist of seven members, as follows: the Governor, the Attorney General, the State Auditor, the Chairman of the State Board of Education, the Chairman of the Board of Regents of the University System of Georgia, the State Superintendent of Schools, and the Chancellor of the University System of Georgia.

The Authority shall elect one of its members as chairman and another as vice chairman and a secretary and treasurer who need not necessarily be a member of the Authority but who shall be the same as the secretary and treasurer of the Georgia Education Authority (University). The majority of the members of the Authority shall constitute a quorum. No vacancy on the Authority shall impair the right of the quorum to exercise all of the rights and perform all the duties of the Authority. The members of the Authority shall not be entitled to compensation for their services, but shall be entitled to and shall be reimbursed for their actual expenses necessarily incurred in the performance of their duties. The staff of the Authority shall be the same as the staff of the Georgia Education Authority (University). The Authority shall make rules and regulations for its own government. It shall have perpetual existence. Any change in name or composition of the Authority shall in no way affect the vested rights of any person under the provisions of this Chapter or impair the obligations of any contracts existing under this Chapter (Acts 1951, pp. 241, 243; 1959, pp. 28, 29; 1959, pp. 363, 364; 1967, pp. 871, 872).

APPENDIX D.

Ga. Code Ann., § 87-818. Trial of case; parties; judgment; bill of exceptions.—Within the time prescribed in the order, the judge of the said superior court shall proceed to hear and determine all the questions of law and of fact in said cause, and shall render judgment thereon, and in the event his judgment shall be in favor of the issuance of said bonds, a judgment and order shall be entered to that effect, and any citizen of this State, resident of such municipality so desiring to issue such bonds, may become a party to said proceedings, and if dissatisfied with the judgment of the court confirming and validating the issuance of the bonds, and the security therefor, may except thereto within 20 days from the judgment, as in the case of injunctions, and upon the hearing in the Supreme Court such bill of exceptions shall be heard in accordance with the practice regulating the hearing of bills of exceptions in criminal cases. Whenever the authorities of a school district, county, city or town shall value existing undertakings under the provisions of subsection (d-1) of section 87-803, the superior courts may review the action of such school district, county, city or town authorities in fixing the said value, which review shall be had in the proceedings to validate the revenue bonds issued under this Chapter. (Acts 1937, pp. 761, 771; 1939, pp. 362, 365.)

APPENDIX E.

Ga. Code, § 59-106. Immediately upon the passage of this Act and thereafter at least biennially, or if the judge of the superior court shall direct, at least annually, on the first Monday in August, or within sixty (60) days thereafter, the board of jury commissioners shall compile and maintain and revise a jury list of upright and intelligent citizens of the county to serve as jurors. In composing such list they shall select a fairly representative cross-section of the upright and intelligent citizens of the county from the official registered voters' list which was used in the last preceding general election. If at any time it appears to the jury commissioners that the jury list, so composed, is not a fairly representative cross-section of the upright and intelligent citizens of the county, they shall supplement such list by going out into the county and personally acquainting themselves with other citizens of the county, including upright and intelligent citizens of any significantly identifiable group in the county which may not be fairly represented thereon.

After selecting the citizens to serve as jurors, the jury commissioners shall select from the jury list a sufficient number, not exceeding two-fifths of the whole number, to serve as grand jurors. The entire number first selected, including those afterwards selected as grand jurors, shall constitute the body of traverse jurors for the county, to be drawn for service as provided by law, except when a name which has already been drawn for the same term as a grand juror shall also be drawn as a traverse juror, such name shall be returned to the box and another drawn in its stead.